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3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
7

8 UNITED STATES OF AMERICA,) No. 12-00537 CW (DMR)
9 Plaintiff,)
10 v.) DETENTION ORDER
11)
12 JEFFREY JAMES MORTON,)
13 Defendant.)
14 _____)

15 **I. BACKGROUND AND INTRODUCTION**

16 Defendant Jeffrey James Morton is charged in a three-count indictment with violations of
17 18 U.S.C. § 2113(a) (bank robbery). Mr. Morton made his initial appearance on July 12, 2012.
18 At that time, the United States moved for his detention pursuant to the Bail Reform Act and
19 asked for a hearing as permitted by 18 U.S.C. § 3142(f). Pretrial Services prepared a full bail
20 study, which recommended Mr. Morton's detention based on its belief that the court could not
21 impose a combination of release conditions to reasonably mitigate the risk of non-appearance as
22 well as the risk of danger to the community. The court held a detention hearing on July 17,
23 2012.

24 Having considered the parties' proffers, the bail study, and the factors set forth in 18 U.S.C. §
25 3142(g), the court finds clear and convincing evidence that Mr. Morton presents a danger to the
26 community, and that no condition or combination of conditions in 18 U.S.C. § 3142(c) will
27 reasonably assure the safety of any other person or the community. 18 U.S.C. § 3142(e) and (f);

1 *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985).

2 **II. LEGAL ANALYSIS**

3 The Bail Reform Act requires that in a pretrial posture, the government bears the burden
4 of proving that a defendant poses a risk of flight and/or a danger to the community that cannot be
5 mitigated through the imposition of conditions of release. If the government does not meet its
6 burden, the Court's duty is to fashion appropriate conditions that permit the defendant to remain
7 out of custody during the preparation of his or her defense, while safeguarding against flight or
8 community danger. Close cases should result in release "[t]o give effect to the principle that
9 doubts regarding the propriety of release be resolved in favor of the defendant." *United States v.*
10 *Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992) (Walker, J.) (citing *United States v. Motamedi*,
767 F.2d 1403, 1405-06 (9th Cir. 1985)).

11 A person facing trial generally shall be released if some "condition, or combination of
12 conditions . . . [can] reasonably assure the appearance of the person as required and the safety of
13 any other person and the community." 18 U.S.C. § 3142(c). In non-capital cases, the court
14 should deny pretrial release "only in rare circumstances." *Motamedi*, 767 F.2d 1403 at 1405
15 (citations omitted); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) (upholding
16 constitutionality of Bail Reform Act) ("In our society liberty is the norm, and detention prior to
17 trial or without trial is the carefully limited exception.").

18 The court must order a defendant detained if it finds that it cannot fashion conditions to
19 assure the defendant's appearance in court or the safety of the community or another person. 18
20 U.S.C. § 3142(e)(1). The government bears the burden of proof on either prong. To prove that
21 no condition or combination of conditions can assure that the accused will appear at required
22 court hearings, the government must show by a preponderance of the evidence that the accused
23 is a flight risk. *United States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990) (citing *Motamedi*, 767
24 F.2d at 1406). The government must prove that the defendant poses a non-mitigable danger to
25 the community through clear and convincing evidence. *Id.* (citing *Motamedi*, 767 F.2d at 1406).

26 For certain charged offenses, including drug crimes with a maximum prison term of at
27 least ten years, "[s]ubject to rebuttal by the person, it shall be presumed that no condition or
28

1 combination of conditions will reasonably assure the appearance of the person . . . and the safety
2 of the community.” 18 U.S.C. § 3142(e)(3). The presumption shifts a burden of production to a
3 defendant, but the burden of persuasion remains with the government. *United States v. Hir*, 517
4 F.3d 1081, 1086 (9th Cir. 2008). The presumption is not erased when a defendant proffers
5 rebutting evidence; “rather, the presumption ‘remains in the case as an evidentiary finding
6 militating against release, to be weighed along with’” the other relevant evidence. *Id.* (citation
omitted).

7 Bail hearings generally proceed by proffer, and the rules of evidence do not apply. 18
8 U.S.C. § 3142(f)(2). At the hearing, the court determines whether any conditions in section
9 3142(c) will reasonably assure the defendant’s appearance and the safety of the community or
10 another person. *Id.* The Bail Reform Act “mandates release of a person facing trial under the
11 least restrictive condition or combination of conditions that will reasonably assure the
12 appearance of the person as required.” *Motamedi*, 767 F.2d at 1405 (citations omitted).

13 In evaluating whether pretrial release is appropriate, a court must consider (1) the nature
14 and circumstances of the offense, (2) the weight of the evidence, (3) the history and
15 characteristics of the person (including his character, physical and mental condition, family ties,
16 employment, financial resources, length of residence in the community, community ties, past
17 conduct, history relating to drug and alcohol abuse, criminal history, or record concerning
18 appearance at court proceedings), and (4) the nature and seriousness of the danger to any person
19 or the community posed by the person’s release. 18 U.S.C. § 3142(g); *Motamedi*, 767 F.2d at
20 1407.

21 **A. The Nature and Circumstances of the Offense and Weight of the Evidence**

22 Mr. Morton is charged with three bank robberies that took place in Spring 2012. He is
23 suspected of committing three additional bank robberies, one of which took place within the
24 Northern District of California; the government currently is determining whether it will bring
25 additional charges against Mr. Morton.

26 **B. The History and Characteristics of Defendant and the Nature and Seriousness of** 27 **the Danger to Any Person or the Community**

28 Mr. Morton is twenty-two years old and has lived in Oakland, Stockton and Merced,

1 California. He reports that he has lived with his mother and cousin in Oakland since 2008. He
2 completed the ninth grade. He is unemployed, and has previously performed some cleaning and
3 yard work.


4 Mr. Morton sustained a juvenile adjudication for carjacking in 2006, and was sent to a
5 group home. He absconded after four months. Between 2008 and 2012, he sustained four felony
6 and two misdemeanor convictions. The felonies included possession of a loaded firearm, second
7 degree robbery and attempted robbery, and grand theft from a person. In addition, his probation
8 was revoked on at least three occasions. In one of those instances, the revocation transpired in
9 lieu of filing a charge of contempt for disobeying a court order.

10 The court finds that the government has met its burden of establishing by clear and
11 convincing evidence that Mr. Morton presents a risk of danger to the community that the court
12 cannot mitigate through the imposition of reasonable conditions. Specifically, the court notes
13 Mr. Morton's significant criminal convictions and arrests, his history of probation revocations
14 including one for contempt of court, and the issuance of two bench warrants.

15 The court therefore detains Mr. Morton. He shall remain committed to the custody of the
16 Attorney General for confinement in a corrections facility separate, to the extent practicable,
17 from persons awaiting or serving sentences or being held in custody pending appeal. Defendant
18 shall be afforded reasonable opportunity for private consultation with counsel. On order of a
19 court of the United States or on request of an attorney for the government, the person in charge
20 of the corrections facility in which Defendant is confined shall deliver Defendant to a United
21 States marshal for the purpose of an appearance in connection with a court proceeding.

22 IT IS SO ORDERED.

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24 DATED: July 17, 2012

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27 DONNA M. RYU
28 United States Magistrate Judge